

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of	)	Case No.: 11-N-11389-LMA
	)	
MARY ANNE M. NAGY,	)	DECISION AND ORDER OF
	)	INVOLUNTARY INACTIVE
Member No. 171942,	)	ENROLLMENT
	)	
A Member of the State Bar.	)	

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Respondent Mary Anne M. Nagy (respondent) was charged with (1) disobeying or violating a court order by failing to comply with a court order requiring her to comply with California Rules of Court, rule 9.20, and violating rule 9.20(c); and (2) failing to comply with all conditions attached to a disciplinary probation. She failed to participate either in person or through counsel, and her default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC),

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on December 1, 1994, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On April 8, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, and by regular mail at her membership records address. The NDC notified respondent that her failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC served via certified mail was returned by the U.S. Postal Service as unclaimed.

On May 11, 2011, the State Bar attempted to reach respondent at three different telephone numbers, two of which were found through internet searches. Respondent was not at two of the numbers and the State Bar left a message at the third number. The State Bar also emailed respondent at an email address found through internet searches. The email was not returned as undeliverable.

Respondent failed to file a response to the NDC. On May 19, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if she did not timely move to set aside or vacate her default, the court would recommend her disbarment. Respondent did not file a response to the motion, and her default was entered on June 9, 2011. The order entering the default was served on respondent at her membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and she has remained inactively enrolled since that time.

Respondent also did not seek to have her default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On February 2, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no disciplinary matters pending; (3) respondent has two records of prior discipline; and (4) the Client Security Fund (CSF) has not paid any claims as a result of respondent's misconduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was originally submitted for decision on February 29, 2012. But because the order was filed prematurely, it was vacated and this matter was resubmitted for decision as of April 2, 2012.

Respondent has been disciplined on two prior occasions.<sup>3</sup> On June 5, 2009, respondent was privately reprovved for not complying with conditions of an agreement in lieu of discipline (ALD); for failing to perform services; and for failing to communicate in two client matters.

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<sup>3</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the Clerk to include copies in the record of this case.

Respondent and the State Bar entered into a stipulation as to facts, conclusions of law and the disposition in this matter.

Pursuant to a Supreme Court order filed on December 14, 2010, respondent was suspended for one year, the execution of which was stayed, and was actually suspended from the practice of law for a minimum of 90 days and until the State Bar Court grants a motion to terminate her suspension. Respondent failed to file a response to the NDC in this matter, and her default was entered. Discipline was imposed in this matter for respondent's failure to comply with probation conditions imposed in a prior disciplinary matter.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

#### **Case Number 11-N- 11389 (Rule 9.20 Matter)**

Respondent violated California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) and Business and Professions Code section 6103 (violation of court order) by failing to file proof of compliance as required by rule 9.20(c) as ordered by the Supreme Court in its December 2010 Order.

### **Disbarment is Mandated under the Rules of Procedure**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

- (1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of her default, as the NDC was served on respondent at her membership records address by both certified and regular mail; the State Bar attempted to reach respondent by telephone at three telephone numbers and by email;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend her disbarment.

## **RECOMMENDATION**

### **Disbarment**

The court recommends that respondent Mary Anne M. Nagy be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys.

### **Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Mary Anne M. Nagy, State Bar number 171942, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: June \_\_\_\_\_, 2012

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LUCY ARMENDARIZ  
Judge of the State Bar Court